

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1975

IN THE MATTER OF:

Served March 27, 1979

Application of HIGHVIEW BUS )  
SERVICE, INC., to Transfer )  
Certificate No. 42 to COURTESY )  
BUS RENTAL SYSTEM, INC., and )  
for Approval of Temporary Control )  
McMICHAEL SCHOOL BUS SERVICE, )  
INC. -- Extension of Service to )  
the Government Printing Office )

Case No. AP-78-47

Case No. MP-79-6

By Order No. 1913 served November 6, 1978, Courtesy Bus Rental System, Inc. (Courtesy), was granted temporary approval to operate Certificate of Public Convenience and Necessity No. 42 of Highview Bus Service, Inc. (Highview), until May 4, 1979, unless otherwise ordered by the Commission. Order No. 1913 also scheduled a public hearing for receipt of evidence on whether a transfer of Certificate No. 42 from Highview to Courtesy would be consistent with the public interest. On January 11, 1979, the public hearing was held and disposition of the matter is now pending.

Subsequently, the Commission received notice from Courtesy's insurance carrier that Courtesy's motor vehicle liability coverage was to be cancelled. When Courtesy failed to demonstrate that insurance would continue in force, we issued Order No. 1966, served February 27, 1979, revoking the above-referenced temporary approval simultaneously with the scheduled cancellation of Courtesy's insurance.

Inasmuch as there was no other carrier certificated to provide regular-route service to the riders previously served by Courtesy, the Commission also issued Order No. 1967 on February 27, 1979. As pertinent, that order found that the public convenience and necessity required an extension of service to the displaced riders, and the Commission, sua sponte, directed McMichael School Bus Service, Inc., to commence operations as described in Certificate No. 42 on February 28, 1979.<sup>1/</sup>

<sup>1/</sup> See Title II, Article XII, Section 4(e) of the Compact

On March 7, 1979, Courtesy, by counsel, filed a motion (styled petition) to vacate Order No. 1966 and reinstate Order No. 1913 in Case No. AP-78-47, and to revoke Order No. 1967 in Case No. MP-79-6.<sup>2/</sup> The motion alleges that, in actuality, Courtesy's insurance was never cancelled and has been extended through October 7, 1979. This contention is supported by a notice of insurance reinstatement received from Courtesy's insurance carrier on March 9, 1979. It is further stated that the imbroglio arose because Courtesy's agent "absconded" with a premium payment in excess of \$6,000, and was further complicated by adverse weather conditions (snow) in late February.

The motion further asserts (a) that cancellation of the above-referenced temporary approval has been a hardship on both Courtesy and its riders, (b) that Courtesy had been conducting a good service which was well received by the riders, and (c) that the passengers prefer riding in Courtesy's coaches rather than the school buses operated by McMichael, particularly where no price differential is involved.<sup>3/</sup>

On March 16, 1979, McMichael, by counsel, filed its reply to Courtesy's motion.<sup>4/</sup> McMichael notes that Courtesy had in excess of one month to resolve its insurance problems and to prevent revocation of the temporary approval granted by Order No. 1913. McMichael also questions the reliability of Courtesy's contentions regarding failure timely to comply with the Commission's insurance requirements and points out that Courtesy's representation's are unverified in contravention of Rule 4-06 of the Commission's Rules of Practice and Procedure.

The Commission is of the view that the instant motion should be determined in accordance with the standards prescribed by Title II, Article XII, Section 12(d) of the Compact governing temporary approval of certificate transfers. Specifically, this subsection provides that the Commission may, in its discretion, grant such temporary approval where failure so to do may result in destruction of or injury to the property to be transferred or substantial interference with its future usefulness in the performance of adequate and continuous service to the public. Also implied in this subsection, as is the case with applications filed pursuant to Title II, Article XII, Section 4(d)(3) of the Compact, is the requirement that the carrier be fit, financially and otherwise, both to perform the contemplated transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations and orders thereunder. The implied fitness criteria has long been utilized

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<sup>2/</sup> No verified statements or other evidence was submitted in support of the factual representations relied on in said motion.

<sup>3/</sup> Order No. 1967 authorized McMichael to charge a monthly per capita rate of \$42, the same rate previously approved for Courtesy.

<sup>4/</sup> It should be noted that a certificate indicating that Courtesy's motion was served on McMichael was not received by the Commission until March 12, 1979.

by this Commission and others, including the Interstate Commerce Commission, and fitness is always at issue in any proceeding where a carrier may be authorized to provide public service. Cf. Order No. 1734, served August 5, 1977; 49 CFR 1131.4(b)(8) and Ex Parte No. 67, Sub No. 3, Fitness Issues in TA Applications, 41 Fed.R. 43904 (Sept. 17, 1976). However, in temporary authority and temporary approval cases, fitness is judged in light of the urgency of the transportation need. See Order No. 1734, supra, and 49 CFR 1131.4(c)(1)(i).

In Order No. 1913 we found that the specified statutory criteria had been met and no challenge to that finding has been made. However, Courtesy's insurance "imbroglia" as well as certain other matters arising since the issuance of Order No. 1913 raise serious questions about Courtesy's fitness. It is our finding that Courtesy must fulfill certain outstanding commitments bearing on its fitness as a carrier before it is allowed to resume operations subject to this Commission's jurisdiction.

So that all parties may be aware of the factors bearing on our decision herein, we emphasize that Courtesy's insurance problem is not an isolated instance of noncompliance, but is viewed within the context of the entire record in this case. As noted above, some matters are still pending, and our findings herein should not be construed as raising any presumption regarding the ultimate outcome of Courtesy's application filed pursuant to Title II, Article XII, Section 12(b) of the Compact. A brief summary of Courtesy's shortcomings to date, however, should be set forth.

Order No. 1913, served November 6, 1978, directed, inter alia, that Courtesy (a) publish notice of the public hearing on its application no later than November 21, 1978, (b) pay a specified assessment no later than November 29, 1978, (c) file certain statements no later than November 29, 1978, and (d) produce at the public hearing "a list of its equipment, evidence of its safety and maintenance programs, and such other information necessary and relevant to a determination of [Courtesy's] operational and financial fitness". On December 4, 1978, the Commission was informed that Courtesy had not published the required notice and new publication and hearing dates were set. See Order No. 1933, served December 5, 1978.

The assessment referenced above was not paid until January 11, 1979, despite verbal assurances from Courtesy over a period of weeks that "the check is in the mail", and the statements due on November 29, 1978, were never filed.<sup>5/</sup> At the hearing, Courtesy failed to supply an equipment list, and its witnesses were unable to answer many questions about the carrier's financial condition. Courtesy agreed at the hearing to provide an equipment list, a copy of the company's 1977 federal income tax return and copies of its temporary and permanent operating authority from the Interstate Commerce Commission. Despite the order of the Hearing

<sup>5/</sup> A "breakdown of expenses" was submitted at the hearing, but this is hardly equivalent to the projection of revenue and revenue deductions required by Order No. 1913.

Officer that these documents be produced by January 21, 1979, they have not yet been filed. Obviously the carrier's vehicular capacity, financial status and other service obligations are material and relevant to the Commission's determination of Courtesy's fitness. The carrier's consistent failure to produce requested materials may be construed as evidencing a determination to hide unfavorable information, and may also warrant the conclusion that Courtesy is unable or unwilling to comply with reasonable regulatory requirements.

The Commission finds that the sound exercise of its discretion warrants reinstatement of the temporary approval only if Courtesy can demonstrate its operational, financial and compliance fitness. To this end, we shall provide for reinstatement of the temporary approval, effective April 30, 1979, conditioned, however, upon the timely compliance by Courtesy with the directives set forth below. Said temporary approval, if reinstated, will extend until June 30, 1979, unless otherwise ordered by the Commission. Failure timely to comply with the directives of this order shall result in automatic denial of the motion filed herein and may be construed as evidence of unfitness in connection with the transfer portion of Case No. AP-78-47.

With respect to McMichael, which has been providing service since February 28, 1979, it shall be directed to continue its service through Friday, April 27, 1979, unless otherwise ordered. Because McMichael was unable to collect revenue for its first day of operation (said revenue having already been paid to Courtesy), equity requires that McMichael be entitled to collect and retain all revenue for the month of April 1979. Courtesy's "free" day of service on April 30, 1979, should it come to pass, will offset its "bonus" revenue for service not performed on February 28, 1979.

THEREFORE, IT IS ORDERED:

1. That Courtesy Bus Rental System, Inc., is hereby directed to file with the Commission (a) an equipment list showing all vehicles owned and or operated by Courtesy as of January 11, 1979, including make, model, serial and tag numbers, state of registration, seating capacity and name(s) of titleholder(s); (b) the carrier's 1977 and 1978 income tax returns as filed with the United States Internal Revenue Service; (c) all temporary and permanent authority issued to the carrier by the Interstate Commerce Commission and/or any other regulatory agency; (d) a schedule showing the carrier's vehicle utilization during the period January 1 through February 27, 1979, including a detailed description of all movements operated by the carrier, specifying the vehicle and driver assigned to each movement, and further specifying whether the vehicle used for each movement was owned by or leased to the carrier.

2. That the above-required filings shall be made under oath, with an original and four conformed copies of each to be filed at the

offices of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C. 20006, no later than Friday, April 13, 1979.

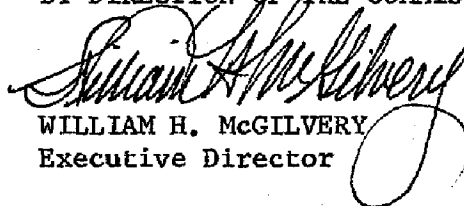
3. That upon acceptance of the above-required filings by the Executive Director of the Commission within the time specified, the temporary approval heretofore granted to Courtesy Bus Rental System, Inc., by Order No. 1913 shall be reinstated effective April 30, 1979, and shall remain in effect through June 30, 1979, unless otherwise ordered by the Commission.

4. That upon acceptance of the above-required filings by the Executive Director of the Commission within the time specified, Order No. 1967, served February 27, 1979, directing McMichael School Bus Service, Inc., to provide certain service shall be vacated and set aside effective April 29, 1979, at 11:59 p.m.

5. That in the event Courtesy Bus Rental System, Inc., fails timely and fully to comply with the directives of paragraphs 1 and 2 above, the relief granted in paragraphs 3 and 4 hereof shall become null and void and the motion described above shall stand denied in its entirety, without further order of the Commission, effective upon the expiration of the compliance time set in paragraph 2 above or such additional time as may be authorized by the Commission.

6. That, except to the extent conditionally granted herein, the relief sought by the above-described motion of Courtesy Bus Rental System, Inc., is hereby denied.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director